

**KENTUCKY PERSONNEL BOARD  
MINUTES OF FEBRUARY 13, 2015**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on February 13, 2015, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman  
Larry B. Gillis, Vice Chairman  
David B. Stevens, Member  
Donald W. "Don" Blevins, Member  
Amanda Cloyd, Member  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

David F. Hutcheson, Jr., Member  
Tommy W. Chandler, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JANUARY 9, 2015**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Dr. Stevens moved to approve the minutes, as submitted. Mr. Blevins seconded and the motion carried 5-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that the Statistics for the 2014 Calendar Year report show that 326 Final Orders were issued. He said that settlements continue to rise which decreases the number of active appeals pending and help staff maintain a manageable workload.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

#### **4. PERSONNEL CABINET'S REPORT**

The Hon. Dinah Bevington, Executive Director, came forward to present the Personnel Cabinet's report.

Ms. Bevington stated that at the next Board meeting she will provide amendments to the Personnel Cabinet's regulations for the Boards review. The regulations are undergoing a few changes and are still being compiled

Ms. Bevington advised that due to the security breach of the state's health carrier Anthem, staff is working on a daily basis to resolve this issue, with the involvement of the FBI. She stated that 80 million records have been impacted. Anthem will contact members via written notification; not through e-mail. Members can sign up for free credit protection for two years at Anthemfacts.com.

Ms. Bevington stated that the Mandatory Direct Deposit Policy for all employee payroll checks will become effective March 15, 2015, and will begin in June. Employees not signed up for direct deposit will receive a pay card. At this time 2,500 employees receive paper checks.

Following the Personnel Cabinet's report, Chairman Sapp called the parties forward for oral argument.

#### **5. ORAL ARGUMENTS**

##### **A. Donald Newell v. Energy and Environment Cabinet (2013-270)**

Present for oral arguments were counsel for Appellant, the Hon. Paul Fauri; and counsel for Appellee, the Hon. Leesa Moorman. After presenting oral arguments, the parties answered questions from the Board, with Mr. Gillis recusing.

##### **B. Jennifer Smith v. Public Protection Cabinet (2014-122 and 2014-123)**

Present for oral arguments were counsel for Appellant, the Hon. Paul Fauri; and counsel for Appellee, the Hon. Canon Armstrong. After presenting oral arguments, the parties answered questions from the Board, with Mr. Gillis recusing.

##### **C. Tiffany Stine v. Justice and Public Safety Cabinet (Criminal Justice Training) (2014-176)**

Present for oral arguments were counsel for Appellant, the Hon. Paul Fauri; and counsel for Appellee, the Hon. Gerald Ross. After presenting oral arguments, the parties answered questions from the Board.

6. **MOTIONS**

**Kimberly Dickerson v. Cabinet for Health and Family Services (2014-027)**

--Appellee's Motion to Clarify/Reconsider

--Appellant's Response to Motion and Motion for Immediate Reinstatement and  
for Attorney Fees

Mr. Sipek stated that it is appropriate for the Board members to consider these motions in closed session.

Later, in open session, Mr. Gillis moved to deny Appellee's Motion to Clarify/Reconsider and Appellant's Motion for Attorney Fees. The Appellee shall provide the Personnel Board a statement signed by the Appointing Authority verifying that the Appellee has complied with the Board's Order in full, **FORTHWITH**. Mr. Blevins seconded and the motion carried 5-0.

7. **CLOSED SESSION**

Dr. Stevens moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Mr. Blevins seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (10:48 a.m.)

Dr. Stevens moved to return to open session. Mr. Blevins seconded and the motion carried 5-0. (12:28 p.m.)

8. **CASES TO BE DECIDED**

**The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.**

A. **Donald Newell v. Energy and Environment Cabinet (2013-270)**

Mr. Blevins, having noted Appellee's exceptions, Appellant's response and oral arguments, moved to defer this matter to the next Board meeting. Ms. Cloyd seconded and the motion carried 4-0, with Mr. Gillis recusing due to a personal relationship with a witness.

**B. Jennifer Smith v. Public Protection Cabinet (2014-122 and 2014-123)**

Mr. Blevins, having noted Appellee's exceptions, Appellant's response and oral arguments, moved to defer this matter to the next Board meeting. Dr. Stevens seconded and the motion carried 4-0, with Mr. Gillis recusing due to a personal relationship with a witness.

**C. Tiffany Stine v. Justice and Public Safety Cabinet (Criminal Justice Training) (2014-176)**

Mr. Gillis, having noted Appellant's exceptions, Appellee's response and oral arguments, moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 5-0.

**D. Patricia Major v. Labor Cabinet (2013-103)  
Deferred from January meeting**

Ms. Cloyd, having noted Appellant's exceptions, moved to accept the Final Order dismissing the appeal, as attached to the minutes. Dr. Stevens seconded and the motion carried 4-0, with Mr. Gillis recusing.

**E. Kelly Jones v. Cabinet for Health and Family Services and Mary Burton (2014-008)**

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 5-0.

**F. Alan Salyer v. Justice and Public Safety Cabinet (Juvenile Justice) (2014-115)**

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Blevins seconded and the motion carried 5-0.

**G. Natasha Stewart v. Cabinet for Health and Family Services (2014-101)**

Mr. Blevins, having noted Appellee's exceptions returned as untimely, moved to defer this matter to the next Board meeting. Mr. Gillis seconded and the motion carried 5-0.

**H. Loretta Wilkerson v. Justice and Public Safety Cabinet (Corrections) (2014-248)**

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Blevins seconded and the motion carried 5-0.

**Show Cause Orders – No Response Filed – Appeal Dismissed**

Dr. Stevens moved to find that the Appellant had not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Mr. Gillis seconded and the motion carried 5-0.

- I. Leatrice Scott v. Justice and Public Safety Cabinet (Corrections)

**9. WITHDRAWALS**

Mr. Blevins moved to accept the following withdrawal of appeals *en bloc* and dismiss the appeals. Dr. Stevens seconded and the motion carried 5-0.

- A. Chelsea Anderson v. Justice and Public Safety Cabinet (Corrections)
- B. Samara Baker v. Personnel Cabinet
- C. Joseph Bundy v. Transportation Cabinet
- D. Dovie Kelly v. Justice and Public Safety Cabinet (Corrections) (2014-065)
- E. Bobby Lewis v. Transportation Cabinet
- F. William Moore v. Cabinet for Health and Family Services
- G. Tina Naylor v. Justice and Public Safety Cabinet (Corrections)
- H. Theresa Robb v. Department of Veterans Affairs
- I. Timothy Rose v. Justice and Public Safety Cabinet (Corrections) (2 appeals)
- J. Patti Schiller v. Personnel Cabinet
- K. Thomas Walker v. Cabinet for Health and Family Services and Personnel Cabinet
- L. Michael Weitlauf v. Justice and Public Safety Cabinet (Juvenile Justice)
- M. Dawn E. Foland v. Justice and Public Safety Cabinet (Corrections)

**10. SETTLEMENTS**

- A. Markus Brown v. Cabinet for Health and Family Services and Personnel Cabinet
- B. Regina Couch v. Justice and Public Safety Cabinet (Corrections)
- C. Stuart Fanning v. Department of Fish and Wildlife (3 appeals)
- D. Mentwab Gudisa v. Cabinet for Health and Family Services
- E. Katherine Michele Peterson v. Cabinet for Health and Family Services
- F. Paris Sims, III v. Justice and Public Safety Cabinet (Public Advocacy) (2 appeals)
- H. Antonio Wharton v. Personnel Cabinet and Justice and Public Safety Cabinet  
(Corrections)

Dr. Stevens moved to issue settlement orders and to sustain the appeals “A., B., C., D., E., F. and H.” to the extent set forth in the settlements as submitted by the parties. Ms. Cloyd seconded and the motion carried 5-0.

G. Trisha Thomas v. Cabinet for Health and Family Services

Mr. Blevins moved to defer this matter to the next Board meeting. Mr. Gillis seconded and the motion carried 5-0.

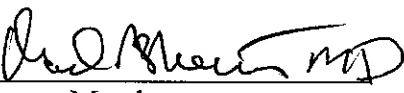
11. **OTHER**


Mr. Sipek stated that he wanted the Board members to be aware of an article from the Courier-Journal concerning the Metropolitan Sewer District which may impact communications on personal cell phones or personal computers being subject to open meetings and open records laws.

There being no further business, Mr. Blevins moved to adjourn. Dr. Stevens seconded and the motion carried 5-0. (12:44 p.m.)

  
Wayne D. Sapp, Chairman

  
Larry Gillis, Vice Chairman

  
David B. Stevens, Member

  
Donald W. Blevins, Member

  
Amanda Cloyd, Member

PATRICIA MAJOR

**VS.**

## LABOR CABINET

**APPELLEE**

4. Appellant also claims that her evaluation was done in retaliation for her “persistent remarks, comments and complaints regarding illegal and/or wrongful agency policy.” (Appellant’s Closing Argument.) To establish a *prima facie* case of retaliation in

the employment context, Appellant must show that (1) she engaged in a protected activity; (2) her employer knew she engaged in the protected activity; (3) thereafter, her employer took some employment action adverse to the employee; (4) there was a causal connection between the protected activity and the adverse employment action. *Smith v. City of Salem, Ohio*, 378 F.3d 566, 570 (6<sup>th</sup> Cir. 2004). Actionable retaliation claims are limited to those where an employer causes "material adversity" not "trivial harms." *Burlington Northern and Santa Fe Railway Co. v. White*, 548 US 53, 126 S.Ct. 2405, 165 L.Ed.2d 345 (2006). The Board concludes as a matter of law that even assuming that the first three prongs of the *prima facie* case of retaliation in the employment context were met, Appellant did not prove any causal connection between Appellant's complaints about Cabinet policy regarding interpretation or enforcement of statutes and the action taken against her. The Board concludes that Appellant failed in her burden of proof to demonstrate a causal connection between any such reports of alleged wrong doing by the Agency and Appellant's 2013 year-end evaluation.

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C. **Renumber** Conclusion of Law number 8 to number 5.

**IT IS FURTHER ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant's appeal is **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

**SO ORDERED** this 20<sup>th</sup> day of February, 2015.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK, SECRETARY**



A copy hereof this day mailed to:

Hon. E. H. "Chip" Smith, IV  
Hon. C. Mike Moulton  
Lynn K. Gillis  
Sherry Butler